



UNITED STATES PATENT AND TRADEMARK OFFICE

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**OFFICE OF PETITIONS**

In re Application of  
Barbarella, et al  
Application No. 09/967,057  
Filed: 28 September, 2001  
Attorney Docket No. 3797IN-1-CIP

ON PETITION

This is a decision on the petition filed on 1 August, 2003, and considered under 37 C.F.R. §1.182.

The Office regrets the delay in addressing this matter. (It is noted that Petitioner filed the papers seeking priority alternatively seeking to revive the parent Application No. 09/540,659.)

For the reasons set forth below, the petition as considered under 37 C.F.R. §1.182 is  
**DISMISSED.**

**BACKGROUND**

The record reflects that:

- Office records reflect that Petitioner filed on 28 September, 2001, the instant application as a continuation-in-part of the parent Application No. 09/540,659 (the '659 application), along with a request and fee authorization for extension(s) of time as required (one month, in that context);
- however, because the papers were not matched with the file of the '659 application, it appeared that Petitioner failed to reply timely and 30 May, 2001, final Office action in

that matter , with a reply due absent a request and fee for extension of time on Thursday, 30 August, 2001;

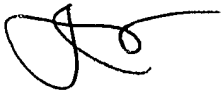
- a result, the '659 application was deemed abandoned after midnight 30 August, 2001;
- Notice of Abandonment for the '659 was mailed on 8 March, 2002;
- it appears that Petitioner was not aware that the '659 application had been deemed abandoned after midnight 30 August, 2001, until he was denied priority in the instant application, and at that time improvidently filed the instant petition herein, rather than in the instant parent application;
- the instant petition was accompanied by: the statement of Petitioner Joseph Kovarik (Reg. No. 33,005) and copies of documents as to the instant application and the '659 application.

#### CONCLUSION

Because the resolution of the matter addressed here by Petitioner occurs with the withdrawal of the holding of abandonment erroneously entered in the '659 application, and the resulting co-pendency of the instant application and it's '659 parent, the instant petition under 37 C.F.R. §1.182 hereby is **dismissed as moot**.

The file is forwarded to the Technology Center 1700 to correct Office records to reflect that the instant application was in fact co-pendent with the parent Application No. 09/540,659, and for such further processing as required in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



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